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June 2, 2011

VIA ELECTRONIC FILING

Honorable Faith S. Hochberg, U.S.D.J.
United States District Court
Frank R. Lautenberg U.S. Post Office & Courthouse
One Federal Square, Room 369
Newark, New Jersey 07102

Re: Butler Capital Corporation v. Call Command, LLC, et al.
Civil Action No. 2:09-CV-83
Motion for Summary Judgment Return Date: June 20, 2011

Dear Judge Hochberg,

Please be advised that our firm represents the plaintiff, Butler Capital Corporation, with regard to the above referenced matter.

Please Note: on Tuesday May 31, 2011, our office was served with a copy of the defendants Notice of Motion for Summary Judgment, consisting of 155 page Motion (with exhibits) and, learned that same had been electronically filed at approximately 5:26:53 pm on Friday May 27, 2011, just before the Memorial Day weekend, and; at a time when our offices were closed for the holiday.

It is respectfully submitted that the return date of June 20, 2011, listed on defendants moving papers was in error and that the Opposition to the Motion being due June 6, 2011 is both procedurally incorrect and in violation of this Court Third Amended Pretrial Scheduling Order and Rule 56(c).

Rule 56(c), Summary Judgment, Time for Motion, Response, and Reply; Proceedings, states:

"(1) These times apply unless a different time is set by local rule or the court orders otherwise:

- (A) a party may move for summary judgment at any time until 30 days after the close of all discovery;
- (B) a party opposing the motion must file a response within **21 days** after the motion is served or a responsive pleading is due, whichever is later; and
- (C) the movant may file a reply within 14 days after the response is served."

The Third Amended Pretrial Scheduling Order ¶11 provides:

"All dispositive motions shall be discussed in advance of filing with the Undersigned either in person or by teleconference..." which did not occur.

"Any and all dispositive motions must be filed no later than **May 27, 2011**, and must be comply with Local Rule 7.1. No pretrial dispositive motions will be entertained after that date. Any responses shall be submitted no later than **June 20, 2011** and any replies shall be submitted no later than **June 27, 2011**. NO extensions under Rule 7.1 may be sought. The return date shall be ~~**July 5, 2011**~~ before the Hon Faith S. Hochberg. Her Honor's chambers will advise the parties if oral argument will be required.

Today we receive Her Honor's Notice setting Deadlines as to [52]MOTION for the aforesaid Summary Judgment setting forth 6/20/2011 as the return date, to be decided on the papers.

Notwithstanding, there is no local rule or further Court Order which alters The Third Amended Pretrial Scheduling Order setting forth the reasonable and customary time that the plaintiff has to respond to this Motion, to wit: at least on or before June 20, 2011, with the defendants filing reply papers on or before June 27, 2011 and the return date being July 5, 2011.

We respectfully submit that the Defendants listing 6/6/2011 Response due date was in error and that the subsequent Court's Notice that the motion will be decided on the papers on June 20, 2011, respectfully continued the aforesaid error that the Response due date of 6/6/2011.

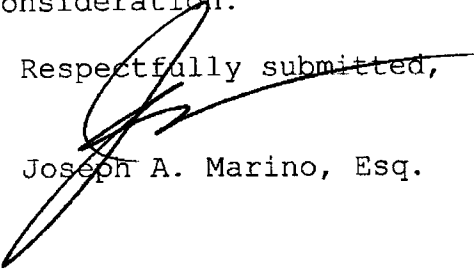
Respectfully, we request your Honor to reconsider the Response due date of 6/6/2011, to be in error and advise all parties, of the correct dates. Please note plaintiff is contemplating a Cross Motion for Summary Judgment.

We further respectfully request your Honor grant plaintiff the courtesy of a reasonable extension to reply (as is customary), so that we may file any Cross Motion, and reset all subsequent due dates accordingly.

Finally, we note that although the defendants specifically requested oral argument, the Court has set this Motion down to be decided on the papers. Our firm requests that the Court reconsider this decision as oral arguments would be necessary for a complete record of this dispositive Motion.

Thank you for your time and consideration.

Respectfully submitted,


Joseph A. Marino, Esq.

JAM:

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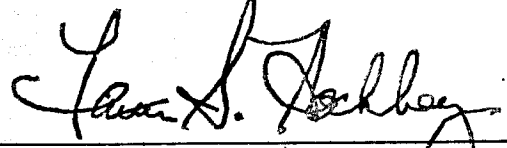
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The return date for defendants' motion for summary judgment shall be July 5, 2011. Plaintiff's opposition shall be due on June 20, 2011. If plaintiff seeks to file a cross motion for summary judgment it may do so no later than June 20, 2011 by filing a single brief in support of its cross motion and in opposition to defendants' motion. No reply will be permitted in support of any cross motion filed by plaintiff without leave of the Court.

It is so ordered. 6-3-11.


Hon. Faith S. Hochberg, U.S.D.J.